

Appeal from decision of the New Mexico State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offers, NM 33307 and NM 33308 (OK).

Affirmed as modified.

1. Mineral Leasing Act: Lands Subject to -- Oil and Gas Leases: Lands Subject to

Lands situated within the borders of incorporated cities and towns are excluded from leasing by the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 (1976).

2. Oil and Gas Leases: Known Geologic Structure -- Oil and Gas Leases: Noncompetitive Leases

Land within a known geologic structure of a producing oil or gas field can only be leased competitively under the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 226(b) (1976), and a noncompetitive offer for such lands must be rejected.

APPEARANCES: Martha T. Collins, Esq., Holme Roberts and Owen, Denver, Colorado, for appellant.

#### OPINION BY ADMINISTRATIVE JUDGE THOMPSON

By a July 13, 1979, decision, the New Mexico State Office, Bureau of Land Management (BLM), rejected appellant's noncompetitive oil and gas lease offers, 1/ on the ground that the lands were unavailable for

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1/ Appellant applied for the following lands within the Fort Reno Military Reserve:

NM 33307: Lots 1, 2, 3, 4, S 1/2 N 1/2, S 1/2 sec. 1;  
3, 4, S 1/2 N 1/2, S 1/2 sec. 3; sec. 10

Lots 1, 2,

oil and gas leasing due to their inclusion within the limits of the city of El Reno, Oklahoma. BLM incorrectly stated that the offers had been filed under the Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. § 352 (1976), which excludes from leasing any acquired lands within incorporated cities and towns. The decision observed that by El Reno, Oklahoma, Ordinance 2030 (Apr. 3, 1962), El Reno extended its corporate limits to include, among others, the sections in dispute here.

[1] However, as appellant points out, these are public lands, not acquired lands, and the lease offers were filed pursuant to the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 (1976). This statute gives the Secretary of the Interior authority to lease "[d]eposits of \* \* \* oil, \* \* \* or gas, and lands containing such deposits owned by the United States, \* \* \* but excluding lands \* \* \* in incorporated cities, towns and villages \* \* \*." See also 43 CFR 3101.1-1(a)(3). The decision below is modified to make this correction, as to the act appellant's filed under and its controlling provisions here.

Appellant argues that BLM leased several tracts within the same township since El Reno, Oklahoma, Ordinance 2030 was passed in 1962 and argues that his applications should be treated similarly. He argues also that Ordinance 2030 is invalid insofar as it affects oil and gas leasing on Federal lands because states and political subdivisions of states cannot impinge upon the title of the United States to its lands, nor interfere with the ability of the United States to dispose of its lands. These arguments have no merit. The question concerns what Congress has authorized. This cannot be ignored by such an attack.

Deposits of oil and gas within the limits of incorporated cities and towns cannot be leased under the Mineral Leasing Act of 1920, supra, because they are specifically excluded by the Act. Ed Pendleton, 45 IBLA 398 (1980); Hawthorn Oil Co., 37 IBLA 91 (1978). Even if earlier leases were erroneously issued within El Reno's borders, the Board cannot sanction compounding such errors. The statute's language is plain. 2/

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fn. 1 (continued)

and sec. 11 in T. 12 N., R. 8 W., Indian meridian,  
Canadian Co., Oklahoma.

NM 33308: Lots 1, 2, 3, 4, S 1/2 N 1/2, S 1/2 sec. 2;

Lots 1, 2, 3, 4, S 1/2 N 1/2, S 1/2 sec. 4;

sec. 9 T. 12 N., R. 8 W., and sec. 34, T. 13 N., R.

8 W., Indian meridian, Canadian Co., Oklahoma.

2/ We note that if drainage should be caused by wells drained on adjacent lands, BLM may enter into an agreement with the owners of those wells, pursuant to 43 CFR 3100.3. See Hawthorn Oil Co., supra at 94, or it may initiate other measures to protect the public interest, but these would not include leases issued noncompetitively.

[2] Appellant argues also that secs. 9 and 10, T. 12 N., R. 8 W., Indian meridian were excluded from the limits of El Reno by later actions: El Reno, Oklahoma, Ordinances 2156 (Feb. 3, 1969) and 2163 (July 10, 1969). Appellant requests a remand for redetermination of the leasing status of these two sections. Whether or not these two sections remain within the incorporated boundaries of El Reno, other considerations preclude noncompetitive leasing. Status plats in the record show that secs. 9 and 10 are in a known geological structure (KGS) of a producing oil and gas field. Lands within a KGS can only be issued by competitive bidding. Noncompetitive offers for such lands must be rejected. Mineral Leasing Act of 1920, 30 U.S.C. § 226(b) (1976); McDade v. Morton, 353 F. Supp. 1006 (1973), aff'd, 494 F.2d 1156 (D.C. Cir. 1974). Other possible land status reasons for rejecting these offers need not be discussed here. This case does not warrant a remand to BLM for reconsideration of the status of these two sections.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

Joan B. Thompson  
Administrative Judge

We concur:

Frederick Fishman  
Administrative Judge

Joseph W. Goss  
Administrative Judge

